

COMMITTEE ON HEALTH AND HUMAN SERVICES

HOUSE OF REPRESENTATIVES AMENDMENTS TO H.B. 2616

(Reference to printed bill)

1 Strike everything after the enacting clause and insert:

2 "Section 1. Section 14-5312, Arizona Revised Statutes, is amended to
3 read:

4 14-5312. General powers and duties of guardian

5 A. A guardian of an incapacitated person has the same powers, rights
6 and duties respecting the guardian's ward that a parent has respecting the
7 parent's unemancipated minor child, except that a guardian is not liable to
8 third persons for acts of the ward solely by reason of the guardianship. In
9 particular, and without qualifying the foregoing, a guardian has the
10 following powers and duties, except as modified by order of the court:

11 1. To the extent that it is consistent with the terms of any order by
12 a court of competent jurisdiction relating to detention or commitment of the
13 ward, the guardian is entitled to custody of the person of the ward and may
14 establish the ward's place of abode within or without this state.

15 2. If entitled to custody of the ward, the guardian shall make
16 provision for the care, comfort and maintenance of the ward and, whenever
17 appropriate, arrange for the ward's training and education. Without regard
18 to custodial rights of the ward's person, the guardian shall take reasonable
19 care of the ward's clothing, furniture, vehicles and other personal effects
20 and commence protective proceedings if other property of the ward is in need
21 of protection.

22 3. A guardian may give any consents or approvals that may be necessary
23 to enable the ward to receive medical or other professional care, counsel,
24 treatment or service. A GUARDIAN MAY NOT CONSENT TO OR APPROVE WITHDRAWAL OR
25 WITHHOLDING OF THE ARTIFICIAL ADMINISTRATION OF FOOD AND FLUID UNLESS THE
26 GUARDIAN HAS PROVIDED BY CERTIFIED MAIL NOTICE OF THE GUARDIAN'S INTENT TO
27 WITHDRAW OR WITHHOLD FOOD AND FLUID AND HAS PROVIDED THE HEALTH CARE FACILITY
28 WITH WRITTEN EVIDENCE THAT NOTICE HAS BEEN GIVEN. THE GUARDIAN MUST PROVIDE

1 THIS NOTICE WITHIN FIVE BUSINESS DAYS IN ADVANCE TO THE FOLLOWING PERSONS AT
2 THE LAST KNOWN ADDRESS TO ALLOW AN OPPORTUNITY TO FILE A VERIFIED PETITION
3 PURSUANT TO SECTION 36-3206:

4 (a) THE WARD AND THE WARD'S SPOUSE, PARENTS, STEPPARENTS,
5 GRANDPARENTS, BROTHERS, SISTERS, CHILDREN AND STEPCHILDREN, WHETHER OF THE
6 WHOLE OR HALF BLOOD OR BY ADOPTION, AND THE WARD'S CURRENT FOSTER PARENTS AND
7 CURRENT FOSTER CHILDREN.

8 (b) ANY PERSON WHO IS SERVING AS CONSERVATOR OR WHO HAS THE CARE AND
9 CUSTODY OF THE WARD.

10 (c) IF A PERSON IS NOT NOTIFIED UNDER SUBDIVISION (a) OF THIS
11 PARAGRAPH, AT LEAST ONE OF THE ADULT RELATIVES RELATED CLOSEST BY BLOOD TO
12 THE WARD, IF ANY CAN BE FOUND.

13 (d) ANY PERSON WHO HAS FILED A DEMAND FOR NOTICE WITH THE COURT THAT
14 APPOINTED THE GUARDIAN.

15 4. If no conservator for the estate of the ward has been appointed,
16 the guardian may:

17 (a) Institute proceedings to compel any person under a duty to support
18 the ward or to pay sums for the welfare of the ward to perform such person's
19 duty.

20 (b) Receive money and tangible property deliverable to the ward and
21 apply the money and property for support, care and education of the ward, but
22 the guardian may not use funds from his ward's estate for room and board the
23 guardian or the guardian's spouse, parent or child has furnished the ward
24 unless a charge for the service is approved by order of the court made ~~upon~~
25 ~~ON~~ notice to at least one of the next of kin of the ward, if notice is
26 possible. He must exercise care to conserve any excess for the ward's needs.

27 5. A guardian is required to report the condition of the ward and of
28 the estate that has been subject to the guardian's possession or control, as
29 required by the court or court rule.

30 6. If a conservator has been appointed, all of the ward's estate
31 received by the guardian in excess of those funds expended to meet current
32 expenses for support, care and education of the ward shall be paid to the

1 conservator for management as provided in this chapter and the guardian must
2 account to the conservator for funds expended.

3 7. If appropriate, a guardian shall encourage the ward to develop
4 maximum self-reliance and independence and shall actively work toward
5 limiting or terminating the guardianship and seeking alternatives to
6 guardianship.

7 8. A guardian shall find the most appropriate and least restrictive
8 setting for the ward consistent with the ward's needs, capabilities and
9 financial ability.

10 9. A guardian shall make reasonable efforts to secure appropriate
11 medical and psychological care and social services for the ward.

12 10. A guardian shall make reasonable efforts to secure appropriate
13 training, education and social and vocational opportunities for his ward in
14 order to maximize the ward's potential for independence.

15 11. In making decisions concerning his ward, a guardian shall take into
16 consideration the ward's values and wishes.

17 12. The guardian is authorized to act pursuant to title 36, chapter 32.

18 13. The guardian of an incapacitated adult who has a developmental
19 disability as defined in section 36-551 shall seek services that are in the
20 best interest of the ward, taking into consideration:

21 (a) The ward's age.

22 (b) The degree or type of developmental disability.

23 (c) The presence of other handicapping conditions.

24 (d) The guardian's ability to provide the maximum opportunity to
25 develop the ward's maximum potential, to provide a minimally structured
26 residential program and environment for the ward and to provide a safe,
27 secure, and dependable residential and program environment.

28 (e) The particular desires of the individual.

29 B. Any guardian of a ward for whom a conservator also has been
30 appointed shall control the custody and care of the ward and is entitled to
31 receive reasonable sums for the guardian's services and for room and board
32 furnished to the ward as agreed ~~upon~~ ON between the guardian and the

1 conservator if the amounts agreed ~~upon~~ ON are reasonable under the
2 circumstances. The guardian may request the conservator to expend the ward's
3 estate by payment to third persons or institutions for the ward's care and
4 maintenance.

5 Sec. 2. Section 36-3203, Arizona Revised Statutes, is amended to read:

6 36-3203. Surrogate; authority; responsibilities; immunity

7 A. A person authorized as a surrogate to make health care decisions
8 under this chapter is not responsible for paying the patient's health care
9 costs unless the person is otherwise required to do so.

10 B. This chapter does not authorize a surrogate to consent to any act
11 or omission to which the patient could not lawfully consent.

12 C. The surrogate shall make health care decisions for the patient in
13 accordance with the patient's wishes as expressed in the health care
14 directive. If the health care directive does not provide sufficient
15 information to know what the patient would want in a particular circumstance,
16 the surrogate shall base these decisions on the surrogate's knowledge of the
17 patient's values if those are known or can be determined to the surrogate's
18 satisfaction. If neither the health care directive nor the surrogate's
19 knowledge of the patient's values provides a sufficient basis for making a
20 health care decision, the surrogate shall decide based on the surrogate's
21 good faith belief as to what is in the patient's best interest.

22 D. A surrogate who makes good faith health care decisions for a
23 patient is not subject to civil or criminal liability for those decisions.
24 Acts and refusals to act made in reliance on the provisions of a health care
25 directive are presumed to be made in good faith. A court shall base a
26 finding of an absence of good faith on information known to the surrogate and
27 shall enter its finding only after it has made a determination of bad faith
28 in written findings of fact based on clear and convincing evidence of
29 improper motive. For the purposes of this subsection, "good faith" includes
30 all health care decisions, acts and refusals to act based on a surrogate's
31 reasonable belief of a patient's desires or a patient's best interest if

1 these decisions, acts or refusals to act are not contrary to the patient's
2 express written directions in a valid health care directive.

3 E. A surrogate who is not the patient's agent or guardian shall not
4 ~~make decisions to withdraw~~ CONSENT TO OR APPROVE THE WITHDRAWAL OR
5 WITHHOLDING OF the artificial administration of food or fluid. A SURROGATE
6 WHO PETITIONS THE COURT FOR APPOINTMENT AS A GUARDIAN IS SUBJECT TO THE
7 REQUIREMENTS OF SECTION 14-5312, SUBSECTION A, PARAGRAPH 3.

8 Sec. 3. Section 36-3205, Arizona Revised Statutes, is amended to read:

9 36-3205. Health care providers; immunity from liability;
10 conditions

11 A. A health care provider who makes good faith health care decisions
12 in reliance on the provisions of an apparently genuine health care directive
13 or the direction of a surrogate is immune from criminal and civil liability
14 and is not subject to professional discipline for that reliance.

15 B. Health care provider acts and refusals to act made in reliance on
16 the provisions of a health care directive or directions of a surrogate are
17 presumed to be made in good faith. A court shall base a finding of an
18 absence of good faith on information known to the provider and shall enter
19 its finding only after it has made a determination of bad faith in written
20 findings of fact based on clear and convincing evidence of improper motive.
21 For the purposes of this subsection, "good faith" includes all health care
22 decisions, acts and refusals to act based on a health care provider's
23 reasonable belief of a patient's desires, a patient's best interest or the
24 directives of a patient's surrogate if these decisions, acts or refusals to
25 act are not contrary to the patient's express written directions in a valid
26 health care directive.

27 C. A health care provider is not subject to criminal or civil
28 liability or professional discipline for any of the following:

29 1. Failing to comply with a decision or a direction that violates the
30 provider's conscience if the provider promptly makes known the provider's
31 unwillingness and promptly transfers the responsibility for the patient's

1 care to another provider who is willing to act in accordance with the agent's
2 direction.

3 2. Failing to consult a disabled or incapacitated patient's surrogate
4 if the surrogate cannot be contacted after the health care provider has made
5 a reasonable effort to do so or if an emergency situation does not provide
6 the health care provider with sufficient time to locate and consult with the
7 surrogate.

8 3. Relying on a court order concerning a patient.

9 4. A GUARDIAN'S FAILURE TO COMPLY WITH THE NOTICE REQUIREMENTS OF
10 SECTION 14-5312, SUBSECTION A, PARAGRAPH 3.

11 D. This section does not relieve a health care provider from civil or
12 criminal liability or prevent a provider from being subjected to professional
13 disciplinary action for the provider's negligent treatment of a patient if
14 the negligence is unrelated to the provider's reliance on a health care
15 directive, directions from a surrogate or the recommendations of an
16 institutional ethics committee pursuant to section 36-3231.

17 Sec. 4. Section 36-3206, Arizona Revised Statutes, is amended to read:

18 36-3206. Enforcement or challenge of a directive or decision;
19 judicial proceedings; automatic stays

20 A. An interested person may file a verified petition with the superior
21 court to determine the validity or effect of a health care directive or the
22 decision of a surrogate. A PERSON WHO RECEIVES NOTICE PURSUANT TO SECTION
23 14-5312, SUBSECTION A, PARAGRAPH 3 MAY FILE A VERIFIED PETITION WITH THE
24 SUPERIOR COURT WITHIN FIVE BUSINESS DAYS AFTER RECEIPT OF THE NOTICE TO
25 CHALLENGE THE DECISION OF A GUARDIAN TO WITHDRAW OR WITHHOLD THE ARTIFICIAL
26 ADMINISTRATION OF FOOD AND FLUID.

27 B. The petition shall include the following information:

28 1. The name and current location of the patient and any surrogate OR
29 GUARDIAN authorized to make decisions for the patient.

30 2. The name and address of any health care provider known by the
31 petitioner to be providing health care to the principal.

1 3. IF A HEALTH CARE DIRECTIVE EXISTS, a description or a copy of the
2 health care directive.

3 4. The judicial relief sought by the petitioner.

4 C. On the filing of the petition, the court shall enter a temporary
5 order directing compliance with section 36-3203, subsection E. Notice of
6 this order shall be provided by personal service on the surrogate, the
7 patient, the health care providers immediately responsible for the patient's
8 care and other persons the court requires to be notified.

9 D. The court shall review the petition, any other pleadings on file
10 and any evidence offered by the petitioner to determine if it should order
11 temporary orders without a further hearing. The court may enter a temporary
12 order directing the provision or the withholding of specific medical
13 treatment pending a further hearing if the court determines that there is
14 reasonable cause to believe that health care decisions are being made by a
15 surrogate or a health care provider that derogate the patient's wishes or, if
16 the patient's wishes are not known, the patient's best interests.

17 E. The court shall schedule and conduct a hearing within five working
18 days of the filing of a petition. Notice shall be provided by personal
19 service on the surrogate, the patient, the health care providers immediately
20 responsible for the patient's care, and other persons the court requires to
21 be notified.

22 F. On the filing of the petition the court may:

23 1. Appoint an attorney for the patient if it appears that this is in
24 the patient's best interests.

25 2. Appoint an investigator as provided under section 14-5308 or a
26 physician, or both, to evaluate the patient and submit a written report to
27 the court before the hearing.

28 3. Enter other temporary orders that the court determines are
29 necessary and appropriate to protect the wishes or the best interests of the
30 patient, including an order exercising the power of a guardian or appointing
31 a temporary guardian as provided under section 14-5310.

1 G. A person filing a petition under this section is not required to
2 post a bond unless the court determines that a bond is necessary to protect
3 the interests of any party.

4 H. IN A PROCEEDING CHALLENGING THE DECISION OF A GUARDIAN TO WITHDRAW
5 OR WITHHOLD FOOD AND FLUID FROM THE PATIENT, THERE IS A REBUTTABLE
6 PRESUMPTION THAT A PATIENT WHO DOES NOT HAVE A VALID LIVING WILL, POWER OF
7 ATTORNEY OR OTHER HEALTH CARE DIRECTIVE HAS DIRECTED THE PATIENT'S HEALTH
8 CARE PROVIDERS TO PROVIDE THE PATIENT WITH FOOD AND FLUID TO A DEGREE THAT IS
9 SUFFICIENT TO SUSTAIN LIFE, INCLUDING, IF NECESSARY, THROUGH A MEDICALLY
10 INVASIVE PROCEDURE, BY WAY OF THE GASTROINTESTINAL TRACT OR INTRAVENOUSLY,
11 AND THAT THAT PROVISION IS IN THE PATIENT'S BEST INTERESTS.

12 I. THE PRESUMPTION PURSUANT TO SUBSECTION H OF THIS SECTION MAY BE
13 REBUTTED ONLY IF EITHER OF THE FOLLOWING APPLIES:

14 1. IN REASONABLE MEDICAL JUDGMENT:

15 (a) THE PROVISION OF FOOD OR FLUID IS NOT MEDICALLY POSSIBLE.

16 (b) THE PROVISION OF FOOD OR FLUID WOULD HASTEN DEATH.

17 (c) BECAUSE OF THE MEDICAL CONDITION OF THE PATIENT, THE PATIENT WOULD
18 BE INCAPABLE OF DIGESTING OR ABSORBING THE FOOD OR FLUID SO THAT ITS
19 PROVISION WOULD NOT CONTRIBUTE TO SUSTAINING THE PATIENT'S LIFE OR PROVIDE
20 PHYSICAL COMFORT TO THE PATIENT.

21 2. THE COURT FINDS ALL OF THE FOLLOWING BY CLEAR AND CONVINCING
22 EVIDENCE:

23 (a) THE PATIENT, WHEN LEGALLY CAPABLE AND COMPETENT OF MAKING HEALTH
24 CARE DECISIONS, SPECIFICALLY EXPRESSED THAT THE PATIENT WOULD NOT WANT
25 ARTIFICIAL ADMINISTRATION OF FOOD AND FLUID IF THE PATIENT WERE IN AN
26 IRREVERSIBLE COMA OR A PERSISTENT VEGETATIVE STATE.

27 (b) THE PATIENT IS IN AN IRREVERSIBLE COMA OR A PERSISTENT VEGETATIVE
28 STATE THAT THE PATIENT'S DOCTOR REASONABLY BELIEVES IS IRREVERSIBLE OR
29 INCURABLE. THE EVIDENCE THAT THE PATIENT IS IN AN IRREVERSIBLE COMA OR A
30 PERSISTENT VEGETATIVE STATE THAT IS IRREVERSIBLE OR INCURABLE MUST BE
31 SUPPORTED BY EITHER OF THE FOLLOWING:

1 (i) THE OPINION OF AN INDEPENDENT PHYSICIAN WHO IS LICENSED PURSUANT
2 TO TITLE 32, CHAPTER 13 OR 17 AND WHO IS A SPECIALIST IN NEUROLOGY. THE
3 PETITIONER, THE PATIENT OR THE PATIENT'S ATTORNEY MAY PRESENT ADDITIONAL
4 EVIDENCE OF THE PATIENT'S MEDICAL CONDITION THAT IS SUPPORTED BY THE OPINION
5 OF A PHYSICIAN SELECTED BY THAT PARTY.

6 (ii) IF A SPECIALIST IN NEUROLOGY IS NOT AVAILABLE, THE OPINION OF AN
7 INDEPENDENT PHYSICIAN WHO IS LICENSED PURSUANT TO TITLE 32, CHAPTER 13 OR 17
8 AND WHO HAS EXAMINED THE PATIENT SPECIFICALLY TO ASSESS WHETHER THE PATIENT
9 IS IN AN IRREVERSIBLE COMA OR A PERSISTENT VEGETATIVE STATE THAT IS
10 IRREVERSIBLE OR INCURABLE SUPPORTED BY A RECOMMENDATION OF THE INSTITUTIONAL
11 BIOETHICS COMMITTEE OF THE HEALTH CARE FACILITY.

12 (c) THE PATIENT IS UNABLE TO INGEST FOOD OR FLUID BY NATURAL MEANS.

13 ~~H.~~ J. On notice and a hearing, the court may enter appropriate orders
14 to safeguard the wishes of the patient. If the court is unable to determine
15 those wishes, the court may enter appropriate orders to safeguard the
16 patient's best interest. These orders may include:

17 1. Appointing a surrogate if the procedural requirements of title 14,
18 chapter 5, article 3 have been met.

19 2. Removing an agent or any other surrogate and appointing a
20 successor.

21 3. Directing compliance with the terms of the patient's health care
22 directive, including the provisional removal or withholding of treatment if
23 the court finds that this conforms with the patient's wishes or, if the
24 patient's wishes are not known, is in the patient's best interest.

25 4. Directing the transfer of the patient to a suitable facility or to
26 the care of a health care provider who is willing to comply with the
27 patient's wishes.

28 5. Assessing court costs and attorney fees against a party found to
29 have proceeded in bad faith.

30 ~~H.~~ K. Notwithstanding a person's incapacity, the court may deny a
31 petition to appoint a guardian for that person based on the existence of a
32 valid and unrevoked health care directive.

1 ~~L.~~ L. A guardian appointed pursuant to this section is immune from
2 civil and criminal liability to the same extent as any other surrogate
3 pursuant to section 36-3203, subsection D.

4 M. A SUPERIOR COURT ORDER THAT AUTHORIZES A GUARDIAN TO WITHDRAW OR
5 WITHHOLD FOOD OR FLUID IS AUTOMATICALLY STAYED FOR FIVE BUSINESS DAYS TO
6 ALLOW A PARTY, OR THAT PARTY'S HEIR IN THE EVENT OF THE ORIGINAL PARTY'S
7 DEATH, TO SEEK AN EXPEDITED APPEAL WITH THE COURT OF APPEALS. A DECISION
8 FROM THE COURT OF APPEALS IS AUTOMATICALLY STAYED FOR FIVE BUSINESS DAYS TO
9 ALLOW A PARTY, OR THAT PARTY'S HEIR IN THE EVENT OF THE ORIGINAL PARTY'S
10 DEATH, TO SEEK REVIEW BY THE SUPREME COURT. FOOD OR FLUID SHALL NOT BE
11 WITHDRAWN OR WITHHELD PENDING A DECISION ON THE MERITS OF THE CASE BY THE
12 COURT OF APPEALS OR A DECISION ON A PETITION BY THE SUPREME COURT."

13 Amend title to conform

and, as so amended, it do pass

NANCY K. BARTO
Chairman

2616-se-hhs
3/4/09
H:jjb

2616rm
03/02/2009
10:34 AM
C: jcs